

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO.
MW CUSTOM PAPERS, LLC,)	
REILLY INDUSTRIES, INC. , and)	
SOUTHERN WOOD PIEDMONT)	
COMPANY)	
)	
Defendants.)	

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA"), files this complaint and alleges as follows:

1. This is a civil action for injunctive relief and recovery of costs under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607. The United States seeks injunctive relief in order to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Tennessee Products Superfund Site in Chattanooga, Tennessee (hereinafter referred to as the "Site"). The United States also seeks to

recover unreimbursed costs incurred and to be incurred for response activities undertaken and to be undertaken at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the Defendants, pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

DEFENDANTS

4. Each Defendant is a "person," within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and owned and operated a business in this judicial district at the time of disposal of hazardous substances.

5. Each Defendant is a person who at the time of disposal of hazardous substances owned or operated a facility at which such hazardous substances were disposed of within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

GENERAL ALLEGATIONS

6. The Site in this case is defined as the waters, sediments, bed and banks of two reaches of Chattanooga Creek. The first reach stretches from Hamill Road Bridge to the 38th Street Bridge, and is known as the Upper Reach, since the Creek flows from South to North. The second reach is known as the Middle Reach and stretches from the 38th Street Bridge to the point where the Chattanooga Creek joins another tributary called Dobbs Branch. These two reaches of Chattanooga Creek are depicted in the attached map, and are labeled as “Phase I Cleanup” for the Upper Reach, and “Phase II Cleanup” for the Middle Reach.

7. The Tennessee Products Corporation (“TPC”) operated a coke processing plant in Chattanooga, Tennessee, one mile from Chattanooga Creek, from 1921 until 1964 (“The TPC Coke Plant”). The Woodward Iron Company purchased the TPC Coke Plant from TPC in 1964, and operated the TPC Coke Plant until Woodward Iron Company was acquired by The Mead Corporation through a merger on July 19, 1968. Thereafter The Mead Corporation operated the TPC Coke plant until it sold the TPC Coke Plant to Chattanooga Coke & Chemicals Company, Inc. on June 2, 1974.

8. MW Custom Papers, LLC is the successor to The Mead Corporation. The Mead Corporation and its successor will hereinafter be referred to as Mead.

9. The process operations at The TPC Coke Plant, during the time period of ownership by TPC, Woodward Iron Company, and Mead, involved the heating of coal to extremely high temperatures which caused the coal to release gases and transform into coke.

10. The untreated wastewater, generated by the Coke Plant operations during the periods of TPC and Mead ownership, was laden with coal tar constituents, including semi-volatile organic compounds (“SVOCs”) such as phenols which are Polynuclear Aromatic Hydrocarbons (“PAHs”).

11. During the time period of TPC ownership of the Coke Plant until 1948, most of the wastewater was discharged to the Chattanooga Creek via a pipeline that lead to the outfall at Hamill Road Bridge which is located in the Upper Reach of Chattanooga Creek.

12. During Mead ownership there were several time periods when its wastewater was being discharged directly into the Upper Reach of Chattanooga Creek via surface drainage on the coke plant property.

13. Wastewater from the TPC Coke Plant was also discharged via surface drainage to the Upper Reach of Chattanooga Creek from a tributary located northeast of the coke plant during the time period of both TPC and Mead ownership.

14. The Defendant, Reilly Industries, Inc. (“Reilly”), under its prior corporate name of The Reilly Tar and Chemical Company, owned and operated a coal tar processing plant from 1932 until 1975, which was located adjacent to and

directly south of the TPC Plant.

15. In the process of distilling coal tar from the TPC Coke Plant, Reilly created substantial volumes of wastewater on a daily basis. That wastewater also contained coal tar constituents such as Poly Aromatic Hydrocarbons (“PAHs”) and phenols, which it discharged in at least two ways. There existed on the Reilly property, until at least 1948, a pipeline which was connected to the TPC Coke Plant pipeline that led to the outfall at Hamill Road Bridge which is located in the Upper Reach of the Chattanooga Creek. During the entire time period of Reilly coal tar plant operations, there also existed on the Reilly property surface ditches which emptied into the northeast tributary which flowed to Chattanooga Creek in its Upper Reach.

16. The Defendant Reilly, from at least 1932 until 1948, discharged into the pipeline connected to the TPC pipeline leading to the Hamill Road Bridge outfall in the Upper Reach of Chattanooga Creek, wastewater which contained phenols and other coal tar derivatives.

17. The Defendant Reilly, during the entire time period of its operations, discharged into the ditches on its property which flowed to the northeast tributary of Chattanooga Creek, wastewater which contained phenols and other coal tar derivatives.

18. The TPC pipeline, the ditches on the Reilly property, and the surface drainage and ditches on the TPC Coke Plant property are each a “facility” within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

19. The Defendant Southern Wood Piedmont (“SWP”) and its predecessors operated a wood treatment plant from 1924 to 1988 adjacent to Chattanooga Creek. SWP used creosote in its treatment process. SWP’s treatment process generated wastewater entrained with creosote constituents. SWP discharged its wastewater to the Creek until 1976 via a pipe or ditch. In addition, there was at least one overland flow route at the SWP facility where surface drainage flowed to the Creek

20. The pipeline and ditch on the SWP property, and the overland flow route area of surface discharge on the SWP property are each a “facility” within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

21. Studies of Chattanooga Creek sediments demonstrated a history of contamination. As far back as 1980, a Tennessee Valley Authority (“TVA”) study concluded that much of the Creek sediments were contaminated with toxic materials.

22. In 1983, the Tennessee Department of Health and Environment (“TDHE”) declared Chattanooga Creek unsafe for human contact. TDHE warned the public not to swim, wade, or fish in the stream. Surface water and sediment samples collected at or downstream of the TPC coke plant, as well as dredge spoil material from dredging of the northeast tributary in the mid-1980s, indicated contamination by a wide variety of volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”) and inorganics. The majority of the VOC/SVOC contaminants found were petroleum and coal-tar derivatives. In 1985,

the Tennessee Department of the Environment and Conservation (“TDEC”) placed the entire creek bed on the list of state Superfund sites.

23. EPA, in a study conducted in 1990, found the same level of contamination in the Creek as found by the TVA in 1980. In 1992, EPA and the TDEC conducted a follow-up study, which found that the Creek sediments along the entire length of the Creek were contaminated with coal tar derivatives.

24. On August 20, 1993, the Agency for Toxic Substances and Disease Registry (“ATSDR”) released a public health advisory concerning the Creek. ATSDR advised that only qualified officials should be allowed access to the contaminated area. In response, in October 1993, EPA installed a security fence around the most accessible coal-tar deposits near a school, and posted exposure warning signs along areas of the Creek where coal-tar contaminated sediments were documented to exist.

25. EPA placed the Site on the National Priorities List (“NPL”) in September 1995. The NPL, established pursuant to Section 105(a) of CERCLA, 42 U.S.C. 9605(a), and 40 C.F.R. Part 300, lists Superfund sites throughout the United States that, because of releases or threatened releases of hazardous substances, pose a significant threat to human health and the environment.

26. EPA, in its 1992 study found the following hazardous substances at the Site: VOCs and SVOCs including: PAHs, phthalate esters, benzene, tetrachloroethylene, 1,1,1-trichloroethane, toluene, cyanides, ammonia, arsenic, and cadmium; and inorganics including: cadmium, chromium, nickel, cobalt,

copper, zinc.

27. Phenols, PAHs, phthalate esters, benzene, tetrachloroethylene, 1,1,1-trichloroethane, toluene, cyanides, ammonia, arsenic, cadmium, chromium, nickel, cobalt, copper, zinc, are all “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14)

28. Surface water and sediment samples collected at or downstream of the TPC Plant, as well as dredge spoil material from dredging of the northeast tributary in the mid-1980s, indicated contamination by a wide variety of VOCs, SVOCs, pesticides, and inorganics. The majority of the VOC/SVOC contaminants found are petroleum and coal-tar derivatives.

29. VOCs, SVOCs, pesticides, and inorganics contain “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

30. Creosote is also a “hazardous substance” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and contained many of the same VOCs and SVOCs as are found in coal tar.

31. The Site is a “facility” within the meaning of CERCLA, Section 101(9), 42 U.S.C. § 9601(9), as the term includes: wells, pits, ponds, lagoons, ditches, or “any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.” 42. U.S. C. § 9601(9)(B).

32. The term “disposal” is defined in CERCLA Section 101(29), 42, U.S.C. § 9601(29), as having, “ the meaning provided in Section 1004 of the Solid Waste Disposal Act [42 U.S.C.A. § 6903].” Under 42 U.S.C.A. § 6903, the term “disposal” is defined as follows:

the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

33. Defendants, Reilly, Mead and SWP each owned a facility or facilities at the time of disposal of hazardous substances at or in each facility, and are owners within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

34. There were "releases" of “hazardous substances” within the meaning of Section 101(14) and (22) of CERCLA, 42 U.S.C. § 9601 (14) and (22), at and from the Site.

35. EPA initiated a removal of coal tar contamination from Chattanooga Creek in 1997, to process and dispose of coal tar sediments and deposits in a manner that constituted a beneficial reuse of the material. During the course of the removal, approximately 25,350 cubic yards of coal tar related material were excavated and removed from the Creek.

36. EPA issued a Record of Decision (“ROD”) on September 30, 2002, for the final remedy at the Site comprising the clean up of the Middle Reach of Chattanooga Creek. The ROD provided initially for excavation, consolidation, and

transportation of the contaminated sediments from the creek to a facility where they could be converted from a waste to fuel with any residuals going to a landfill. EPA subsequently issued an Explanation of Significant Difference (“ESD”) on August 3, 2004, which provided for the alternate remedy of excavation, treatment and landfill disposal.

CLAIM FOR RELIEF UNDER SECTION 106 OF CERCLA

37. Paragraphs 1-36 are realleged and incorporated herein by reference.

38. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

39. By Executive Order 12580 of January 23, 1987, the President’s functions under 106(a) of CERCLA, 42 U.S.C. 9606(a), have been delegated to the Administrator of EPA.

40. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances at and from the Site.

41. The Defendants each are liable for the injunctive relief to which the United States is entitled with regard to the Site, under Section 106(a) of CERCLA, 42 U.S.C. § 9606.

CLAIM FOR RELIEF UNDER SECTION 107 OF CERCLA

42. Paragraphs 1-36 are realleged and incorporated herein by reference.

43. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of.....

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

44. The United States has incurred response costs of at least \$16,700,000, plus interest, in responding to the release or threatened release of hazardous substances at and from this Site within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25).

45. The Defendants each are jointly and severally liable to the United States for all response costs incurred and to be incurred in performing the response actions at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).


PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order all Defendants to abate the threat posed by the release or threatened release of hazardous substances at or from the Site, by performing the remedy selected by EPA in the ROD and ESD;
2. Award the United States a judgment against each of the Defendants jointly and severally for all response costs incurred by the United States in connection with the Site, plus interest;
3. Award declaratory relief against each of the Defendants for all response costs to be incurred by the United States;
4. Award further costs as the court deems appropriate.

Respectfully submitted,

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